



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 24, 2004

Ms. Traci S. Briggs
Assistant City Attorney
City of Killeen
101 North College
Killeen, Texas 76541

OR2004-2233

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198154.

The City of Killeen (the "city") received a request for fifteen specified Police General Orders. You state that you are releasing nine of the requested general orders. However, you claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." A governmental body that claims information is excepted from disclosure under section 552.108 must reasonably explain how and why this exception applies. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986) (construing statutory predecessor).

In this instance, you have not informed us that the submitted information pertains to any particular ongoing criminal investigation or prosecution, nor have you otherwise adequately explained how release of this information would interfere with the detection, investigation, or prosecution of crime. *See* Gov't Code § 552.108(a)(1). We therefore find that you have failed to meet your burden under section 552.108(a)(1), and no information may be withheld

on this basis. See Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). As you raise no other exceptions to disclosure, you must release the submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Jennifer E. Berry". The signature is fluid and cursive, with the first name "Jennifer" and last name "Berry" clearly legible, and "E." in the middle.

Jennifer E. Berry
Assistant Attorney General
Open Records Division

JEB/lmt

Ref: ID# 198154

Enc: Submitted documents

c: Ms. Melanie Marshall
5903-D Greengate
Killeen, Texas 76543
(w/o enclosures)